IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

SUIT NO.1751 OF 1992

Arunkumar P. Punater. ...Plaintiff.
Vs.
M.T.N.L. and ors. ...Defenmdants.

Mr.P.R. Gyani for the Plaintiff.

Ms.S.I.Shah for the Defendant-MTNL.

CORAM : A.M.KHANWILKAR, J.
DATE : 25th October, 2007.

P.C.

1. Heard counsel for the parties.

2. It is not in dispute that the relief claimed in this suit is in relation to the correctness and validity of the demand bill raised by the defendant-MTNL in respect of telephone charges being excessive one . If it is so, the dispute is squarely covered by Section-7B of the Indian Telegraph Act,1885 and for that reason, it would be imperative to make reference to the Arbitrator to be appointed by the Central Government.

3. The counsel for the plaintiff however, submits that, in the present case, the plaintiff has filed this suit pursuant to the liberty given by the Division Bench of this court in Writ Petition No.366 of 1992 decided on

18.3.1992. In the first place, the learned counsel for the plaintiff fairly accepts that the Division Bench had no occasion to advert to the provisions of Section-7B of the Act. It is well settled position that, if the issue is covered by Section-7B of the Act, it is imperative to make reference for resolution of the dispute before the Arbitrator, which is the mandate of Section-7B of the Act- as is expounded by the Apex Court in the case of **Telecom District Manager, Goa and ors. Vs. V.S. Dempo and Co. reported in A.I.R.1996 S.C.1545.** Thus understood, the fact that the present suit has been filed pursuant to the liberty granted by the Division Bench of this court cannot be the basis to decline reference under Section-7B of the Act, which is a statutory remedy.

4. The counsel for the plaintiff would then submit that, if at all, the matter is to be referred to the Arbitrator, the defendant No.3 should not be appointed as Arbitrator. The General Manager (Central), M.T.N.L. has been impleaded as defendant No.3. However, no person has been impleaded by name as defendant No.3. It is too much to assume that the subsequent General Managers would entertain bias against the plaintiff while acting as Arbitrator, if appointed by the Central Government. The counsel for the defendant-M.T.N.L. however, points out that this issue raised on behalf of

the plaintiff is a non-issue. Inasmuch as, the appointment of Arbitrator by the Central Government will be of a person who is unrelated and has no occasion to deal with the dispute raised by the plaintiff. Besides, the practice is to appoint an officer from other area/region who acts as Arbitrator. In the circumstances, there is no merit in the apprehension expressed on behalf of the plaintiff, as referred to above. However, to obviate such apprehension of the plaintiff, Central Government will be well advised to appoint any officer as Arbitrator instead of General Manager (Central).

5.. In the circumstances, this suit is being disposed of with directions to the Central Government to issue necessary notification to appoint proper person as Arbitrator to try and decide the dispute brought before this court by the plaintiff in relation to excessive billing in respect of Telephone No.8222641 (changed No.3672641). Such notification be issued within eight weeks from today. The counsel for the defendant-MTNL assures to inform the competent authority of the Central Government that the notification must be issued within eight weeks from today.

6. The Arbitrator to be appointed by the Central Government shall conclude the arbitration proceeding not

later than six months from the date he enters upon arbitration or the date on which the parties are expected to make first appearance before him, whichever is earlier.

7. In case any interim order is operating against the defendants, same shall be continued till the disposal of the arbitration proceeding or till the same is modified or varied by the Arbitrator, if and when occasion arises.

8. Needless to observe that the amount already deposited by the plaintiff pursuant to the directions issued by this court will be provided adjustment after the award is passed.

9. In view of this order, the counter claim filed by the defendant-M.T.N.L. is also disposed of and it will be open to the defendant-M.T.N.L. to raise the issues in the counter claim before the Arbitrator, if so advised. The same will be decided on its own merits in accordance with law. In other words, all issues raised in the present proceedings at the instance of either side shall be considered on merits in accordance with law in the arbitration proceedings.

10. Suit is disposed of in the above terms. Refund as

per rules.

(A.M. KHANWILKAR, J.)